

# TOWARD DOMESTIC RECOGNITION OF A HUMAN RIGHT TO LANGUAGE

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## I. INTRODUCTION

To what extent do we have the right, in this country, to express ourselves or receive communications in a language other than English? While there are threads of authority running through our law that appear to provide some answers to this question in several contexts, there is no clearly defined "right to language" in the United States. It is as though the threads have not been woven into the fabric of the law, but rather surface as bothersome loose ends to be plucked off when inconvenient. This Article will examine the existing sources of a right to language, consider why we should be willing to accommodate more than one language, and suggest an analytical framework for the recognition in this country of the human right to language.

## II. THE CONFUSING STATE OF DOMESTIC LAW

The notion that there is a constitutionally protected right to express oneself or receive communications in a language other than English is supported by federal court decisions in several contexts.

In *Meyer v. Nebraska*,<sup>1</sup> the United States Supreme Court reversed a conviction of a Nebraska schoolteacher who had been convicted of violating a state statute which prohibited the teaching of any language other than English in any school to a child who had not passed the eighth grade.<sup>2</sup> The Court determined that the right to teach a language and the right of parents to engage a teacher to so instruct their children are among the liberties protected against infringement by the due process clause of the fourteenth amend-

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1. 262 U.S. 390 (1923).

2. *Id.* at 403.

ment.<sup>3</sup> On the same day, and relying upon the *Meyer* decision, the Supreme Court struck down similar statutes in Ohio and Iowa.<sup>4</sup>

Three years later, the Supreme Court again relied on *Meyer* in declaring unconstitutional a Philippine statute which required Chinese merchants to keep their books in English, Spanish, or in a local dialect, thereby prohibiting them from utilizing the only language they understood.<sup>5</sup> The Court found the law invalid "because it deprives Chinese persons—situated as they are, with their extensive and important business long established—of their liberty and property without due process of law, and denies them the equal protection of the laws."<sup>6</sup>

In 1970, it was determined that the sixth amendment's confrontation clause, made applicable to the states through the fourteenth amendment, requires that non English-speaking defendants be informed of their right to simultaneous interpretation of proceedings at the government's expense.<sup>7</sup> The Court determined that

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3. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment.

*Id.* at 400.

The Court went on to note:

It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and "that the English language should be and become the mother tongue of all children reared in this State." It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.

That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.

*Id.* at 401.

4. *Bartels v. Iowa*, 262 U.S. 404, 409 (1923) (consolidation of *Bartels* with *Bohning v. Ohio* and *Pohl v. Ohio*).

5. *Yu Cong Eng v. Trinidad*, 271 U.S. 500, 528 (1926).

6. *Id.* at 524-25.

7. *United States ex rel Negron v. New York*, 434 F.2d 386, 390-91 (2nd Cir. 1970). The decision served as the impetus for federal statutes requiring interpreters in the federal courts. H.R. REP. NO. 95-1687, 95th Cong., 2d Sess. 4, reprinted in 1978 U.S. CODE CONG. &

otherwise the trial would be a "babble of voices"<sup>8</sup> with the defendant unable to understand the precise nature of the testimony against him<sup>9</sup> and hampering the capacity of his counsel to conduct effective cross-examination.<sup>10</sup> The Court noted:

Not only for the sake of effective cross-examination, however, but as a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded. Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy.<sup>11</sup>

At least one United States District Court has recognized a constitutional right to bilingual education. In the case of *Serna v. Portales Municipal Schools*,<sup>12</sup> the plaintiffs were Spanish-surnamed minors represented by their parents. They claimed that unlawful discrimination against them resulted from the defendant's educational program tailored to educate a middle-class child from an English-speaking family without regard for the educational needs of the child from an environment where Spanish is the predominant language.<sup>13</sup> The trial court found defendant to have violated the equal protection rights of plaintiffs<sup>14</sup> and ordered, among other remedies, that defendant provide bilingual instruction and seek funding under the federal and state bilingual education acts for that instructional program.<sup>15</sup> On appeal, the Tenth Circuit found that the district court had reached the correct result and affirmed the remedial steps ordered by that court, but it did not reach the equal protection issue. Rather, the court chose to follow the approach adopted by the United States Supreme Court in *Lau v. Nichols*.<sup>16</sup> In *Lau*, Chinese-speaking plaintiffs alleged the public school system denied them an education because the only classes

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AD. NEWS 4652-53. See 28 U.S.C.S. § 1827a-k (Law. Co-op. Supp. 1985). See also the "discretionary" provisions of 18 U.S.C. § 3006A(e) (1982), FED. R. CIV. P. 43(f), FED. R. CRIM. P. 28(b), and FED. R. EVID. 604.

8. *Negron*, 434 F.2d at 388.

9. *Id.* at 389.

10. *Id.* at 390.

11. *Id.*

12. 351 F. Supp. 1279 (D.N.M. 1972), *aff'd*, 499 F.2d 1147 (10th Cir. 1974).

13. *Id.* at 1281.

14. *Id.* at 1283.

15. *Id.* at 1283.

16. 414 U.S. 563 (1974).

offered were in the English language.<sup>17</sup> The *Lau* decision found a deprivation of statutory rights under 42 U.S.C. section 2000d (section 601 of Title VI of the Civil Rights Act of 1964) and the regulations of the Health Education and Welfare Department<sup>18</sup> requiring school systems to take remedial steps to rectify language deficiency problems.<sup>19</sup> In *Serna*, the Tenth Circuit adopted the *Lau* approach and affirmed the court-ordered bilingual education plan on statutory grounds,<sup>20</sup> noting the damage suffered by children whose language rights are not respected. This damage included feelings of inadequacy and lowered self-esteem which developed when Spanish-surnamed children came to school and found that their language and culture were totally rejected and that only English was acceptable. The child who goes to a school where he finds no evidence of his language, culture and ethnic group withdraws and does not participate. Such children often demonstrate both academic and emotional disorders, feel frustrated, and express their frustration through lack of attendance, school or community involvement. Their frustrations are further reflected in hostile behavior, discipline problems and eventually dropping out of school.<sup>21</sup>

A tavern's policy against the speaking of "foreign" languages at the bar was held to be unlawful racial discrimination against

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17. *Id.* at 566.

18. *Id.*

19. See Office for Civil Rights Notice, 35 Fed. Reg. 11595 (1970)(stating, "[w]here inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.") (clarifying HEW policy on the responsibility of school districts to provide equal educational opportunities to national origin/minority group children deficient in English language skills under Title VI of HEW regulations). Current version at 35 Fed. Reg. 11595 (1970); 45 C.F.R. § 80 (1986). The U.S. Department of Education assumed the responsibility for these matters in 1979. See Department of Education Organization Act, 20 U.S.C. § 3401 (1982).

20. *Serna*, 499 F.2d at 1153. Four years after *Lau*, the Supreme Court held that Title VI embodied certain constitutional principles in *University of Cal. Regents v. Bakke*, 438 U.S. 265, 286 (1978). Whether a constitutional right to bilingual education might be inferred is open to debate. See Note, *Proposal: Bilingual Education Guidelines for the Courts and the Schools*, 33 EMORY L.J. 588 (1984). But cf. *San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1, 2 (1973)(education is not a "fundamental" right).

21. *Serna*, 499 F.2d at 1150. Teaching the Spanish-speaking child exclusively in English communicates a powerful message to the child that he or she is a second-class citizen. See *United States v. Texas*, 506 F. Supp. 405, 420 (E.D. Tex. 1981), *rev'd on other grounds*, 680 F.2d 356, 372 (5th Cir. 1982).



Mexican-Americans in *Hernandez v. Erlenbusch*.<sup>22</sup> In disposing of the argument that the English-only rule was justified because non-Spanish-speaking customers were "irritated" by the speaking of the Spanish language, the Court stated:

Just as the Constitution forbids banishing blacks to the back of the bus so as not to arouse the racial animosity of the preferred white passengers, it also forbids ordering Spanish-speaking patrons to the "back booth or out" to avoid antagonizing English-speaking beer drinkers.

The lame justification that a discriminatory policy helps preserve the peace is as unacceptable in barrooms as it was in buses. Catering to prejudice out of fear of provoking greater prejudice only perpetuates racism. Courts faithful to the fourteenth amendment will not permit, either by camouflage or cavalier treatment, equal protection so to be profaned.<sup>23</sup>

In addition to the recognition of a constitutional "right to language" in the contexts noted above, there may be a first amendment right to receive broadcast programming in languages other than English.<sup>24</sup>

Federal statutes (and accompanying regulations) also provide a guarantee of the exercise of language rights in a number of contexts, including education,<sup>25</sup> court interpreters,<sup>26</sup> employment,<sup>27</sup> and voting rights.<sup>28</sup> Various state constitutional provisions<sup>29</sup> and

22. 368 F. Supp. 752 (D.C. Cir. 1973). The court provides this background:

The events in August 1972 which produced this case took place in a nondescript little tavern in Forest Grove. They involved nothing more—nor less—lofty than the right of some American citizens to enjoy a bottle of beer at the tavern bar and to speak in Spanish while doing so. The fact that the case was brought is indicative that our society has made significant progress in casting off the more overt forms of racial discrimination. The actions in the tavern—and immediately outside—are, however, a sad reminder that significant racially discriminatory attitudes still remain.

These events furnish a fresh illustration of the truth uttered by President Kennedy a decade ago that "... this nation, for all its hopes and all its boasts, will not be fully free until all its citizens are free."

*Id.* at 753-54.

23. *Hernandez*, 368 F. Supp. at 755-56.

24. Piatt, *Linguistic Diversity on the Airwaves: Spanish Language Broadcasting and the FCC*, 2 LA RAZA L.J. 101 (1984).

25. Civil Rights Act of 1964, 42 U.S.C. § 2000d (1982); Equal Educational Opportunity Act, 20 U.S.C. § 1703(f)(1982); Bilingual Education Act, 20 U.S.C.S. § 3222 (Law. Co-op. Supp. 1985).

26. Refer to note 7 *supra* and accompanying text.

27. 42 U.S.C. § 2000e-2(a) (1982).

28. Voting Rights Act, 42 U.S.C.S. § 1973b(f) (Law. Co-op. Supp. 1985).

29. *E.g.*, N.M. CONST. art. XX, § 12 (publication of laws in English and Spanish); art.

statutes<sup>30</sup> also afford recognition of language rights.

State courts have invalidated default judgments taken against non-English-speaking litigants<sup>31</sup> and have declared contract provisions unconscionable where a person's lack of English fluency precluded equality of bargaining power.<sup>32</sup>

Numerous scholarly articles have discussed, in differing contexts, aspects of a right to use or receive communications in a "foreign" language.<sup>33</sup>

While the reader, at this point, might conclude that the contours of a generic "language right" emerge from the authorities cited to this point, it is important to recognize contradicting lines

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XII, § 8 (teachers to learn English and Spanish); art. XIX, § 1 (publication of proposed constitutional amendments).

Some state constitutions prohibit "national origin" discrimination. See ALASKA CONST. art. 1, § 3, and CONN. CONST. art. I, § 20. Protection of language rights under a "national origin" theory is discussed and critiqued *infra*.

LA. CONST. art. I, § 3 provides that no law shall discriminate against a person because of that person's "culture." See the discussion below of the interrelation of language and culture.

*But see* NEB. CONST. of 1875, art. 1, § 27 (1920)(English declared to be the official language of the state).

30. The statutes are numerous. Many states provide for bilingual education by statute. *E.g.*, ALASKA STAT. §§ 14.30.400-410 (1982); CAL. EDUC. CODE §§ 52160-52186 (West 1978 & Supp. 1986); CONN. GEN. STAT. ANN. §§ 10-17 to 10-17g (West 1977 & Supp. 1985); ILL. ANN. STAT. ch. 122, §§ 14C-1 to -12 (Smith-Hurd Supp. 1985); KAN. STAT. ANN. §§ 72-9501 to 9510 (1985); LA. REV. STAT. ANN. § 17:273 (West 1982); MASS. GEN. LAWS ANN. ch. 71A, §§ 1-9 1978 (West 1985); MICH. COMP. LAWS ANN. §§ 380.1153-.1157 (West Supp. 1985); N.J. STAT. ANN. §§ 18A:35-15 to 26 (West Supp. 1985); TEX. EDUC. CODE ANN. §§ 21.451-.459, .461-.463 (Vernon Supp. 1986); WASH. REV. CODE ANN. §§ 28A.58.800-.810 (West Supp. 1986); WIS. STAT. ANN. §§ 115.95-.996 (West Supp. 1985).

Many states provide for bilingual voting assistance. *E.g.*, N.M. STAT. ANN. ch. 1, art. 1-2-3 (1985); ILL. ANN. STAT. ch. 46, § 24-9 (Smith-Hurd Supp. 1985); D.C. CODE ANN. § 1-1309 (1985).

Court interpreters are required in many states. *See, e.g.*, MD. CTS. & JUD. PROC. CODE ANN. § 9-114 (1984); KAN. STAT. ANN. § 75-4351 (1984).

New Mexico even requires pesticide labels to be printed in Spanish as well as English. N.M. STAT. ANN. § 76-4-4k (1978).

Louisiana requires the teaching of the French language and the culture and history of French populations in its public schools. LA. REV. STAT. ANN. § 17:272 (West 1982).

31. *E.g.*, Cota v. Southern Arizona Bank & Trust Co., 17 Ariz. App. 326, 497 P.2d 833 (1972).

32. *E.g.*, Frostifresh Corp. v. Reynoso, 52 Misc. 2d 26, 274 N.Y.S. 2d 757 (Dist. Ct. 1966), *rev'd as to damages*, 54 Misc. 2d 119, 281 N.Y.S. 2d 964 (N.Y. App. Term 1967).

33. The articles are numerous. *See, e.g.*, in addition to other articles cited herein: Groisser, *A Right to Translation Assistance in Administrative Proceedings*, 16 COLUM. J.L. & Soc. PROBS. 469 (1981); Avila, *Equal Educational Opportunities for Language Minority Children*, 55 U. COLO. L. REV. 559 (1984).

of authority and the illusiveness of this right to language in a number of contexts where litigants have sought to assert it. One such area is the "right" of a bilingual worker to speak a language other than English on the job.

First, let us consider a bit of background. The Equal Employment Opportunity Act prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.<sup>34</sup> Early decisions by the Equal Employment Opportunity Commission (E.E.O.C.) protected language rights at the workplace under the "national origin" pigeonhole,<sup>35</sup> and courts agreed that this category affords such protection.<sup>36</sup> Early cases found in violation of the Act, for example, involved situations where an employer fired a Spanish-surnamed American for supposedly poor work attributed to language difficulties<sup>37</sup> and for company rules prohibiting Spanish language communications among employees.<sup>38</sup> Courts accepted and continue to accept the proposition that employment discrimination based upon language<sup>39</sup> or accent<sup>40</sup> is unlawful discrimination based upon national origin. Courts have also recognized that 42 U.S.C. section 1981 may provide a parallel remedy to the Equal Employment Opportunity Act on this issue.<sup>41</sup>

However, the scope of the right to language on the job is questionable after the decision in *Garcia v. Gloor*.<sup>42</sup> In 1975 Garcia was hired as a salesman by a lumber store in Brownsville, Texas. More than three-fourths of the population in the business area was Hispanic. Many of the store's customers expressed the desire to be waited on by Spanish-speaking salespeople. Garcia was hired precisely because he was bilingual. He was instructed to use English with English-speaking customers and Spanish with Spanish-speaking customers. However, the owner imposed another language rule on Garcia: even though three-fourths of the store's workers and

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34. 42 U.S.C. § 2000e-2(a) (1982).

35. See 29 C.F.R. § 1606 (1985).

36. *Jones v. United Gas Imp. Corp.*, 68 F.R.D. 1 (E.D. Pa. 1975). The Equal Education Opportunity Act, 20 U.S.C. § 1703(f) (1982), explicitly protects language rights under a "national origin" theory. See the critique of this approach in section IV *infra*.

37. 2 FAIR EMPL. PRAC. CAS. (BNA) No. YAU 9-048, at 78 (June 30, 1969).

38. 1973 EEOC Decisions (CCH) No. 71-446 ¶ 6173 (Nov. 5, 1970).

39. *Saucedo v. Brothers Well Serv. Inc.*, 464 F. Supp. 919, 920 (S.D. Tex. 1979).

40. *Carino v. University of Okla. Bd. of Regents*, 750 F.2d 815, 819 (10th Cir. 1984).

41. *Vasquez v. McAllen Bag & Supply Co.*, 660 F.2d 686, 688 (5th Cir. 1981), *cert. denied*, 458 U.S. 1122 (1982).

42. *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981).

customers spoke Spanish, Garcia and all other Spanish-speaking employees were forbidden from speaking Spanish on the job, unless communicating with a Spanish-speaking customer.<sup>43</sup> Among the reasons given by the owner for this rule was that the English-speaking customers (only one-fourth of the total population in the area), objected to the Spanish-speaking employees communicating in a language which they did not understand.<sup>44</sup> One day Garcia was asked a question by another Spanish-speaking clerk about an item requested by a customer. Garcia responded, in Spanish, that the article was not available. The owner overheard this exchange and fired Garcia. In rejecting Garcia's claim for relief under 42 U.S.C. section 2000e-2(a), the district court found there were "valid business reasons" for the rule.<sup>45</sup> On appeal, the Fifth Circuit Court upheld the district court, refusing to critically examine either the validity of the "business reasons" offered or whether the business needs could be met in a less restrictive manner than the imposition of an "English-only" rule.<sup>46</sup> The court found Garcia's conduct to be a deliberate violation of the rule, concluding that a language which a bilingual person elects to speak at a particular time is a matter of choice.<sup>47</sup>

The "right to language" has proved illusory in other areas as well. Courts have concluded that the refusal to appoint an interpreter in a civil proceeding does not violate due process,<sup>48</sup> and that Spanish-speaking welfare recipients have no constitutional right to be notified in Spanish of the termination or reduction of their benefits.<sup>49</sup>

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43. *Id.* at 266.

44. *Id.* at 267.

45. *Id.*

46. *Id.* at 271.

47. *Id.* at 270, 272.

48. *Jara v. Municipal Ct.*, 21 Cal. 3d 181, 578 P.2d 94, 145 Cal. Rptr. 847 (1978), *cert. denied*, 439 U.S. 1067 (1979). The court felt the inquiry should be whether the party had alternative means to secure the relief sought—means other than resort to the trial court itself for aid. The existence of such "alternate means" precludes a claim of a due process or equal protection violation if the court fails to appoint an interpreter at court expense. The harshness of this ruling may be ameliorated in states which, by statute or court rule, appoint interpreters in civil proceedings. *See, e.g.*, KAN. STAT. ANN. §§ 75-4351 to 75-4355 (1984)(providing for interpreters in civil and administrative hearings, as well as in criminal matters).

49. *Guerrero v. Carleson*, 9 Cal. 3d 808, 512 P.2d 833, 109 Cal. Rptr. 201 (1973), *cert. denied*, 414 U.S. 1137 (1974). The Court relied, in part, on a determination that because English is required for naturalization, English is the national language. There are several problems with this approach. First, it ignores the fact that outside of the context of natural-



The confusing state of our domestic law regarding the right to language might well be illustrated by considering the curious results which follow from applying the principles elicited thus far to the situation of a hypothetical Ms. Martinez. Ms. Martinez is a United States citizen. She works part-time and also receives public assistance for her children. She is bilingual, but her primary language, and that of her school-aged children, is Spanish.

Ms. Martinez is fired from her job one day because some customers complain to her boss that she spoke Spanish to a co-worker in their presence, contrary to the store's "English only" rule. On the way home she stops in the tavern to drink a beer. The same customers are seated in the bar. When Ms. Martinez begins to tell another patron of her problems, in Spanish, the same customers object, this time to the tavern manager. The manager orders Ms. Martinez from the bar.

As it turns out, this just has not been her day. At home she learns of the status of two lawsuits filed against her several months previously by different department stores for failure to pay debts allegedly owed to them. In the first suit, Ms. Martinez had not fully understood the complaint and summons due to her language situation and had thrown them away. Now, the store notifies her it has taken a default judgment against her. Ms. Martinez did not really understand the second complaint and summons either, but tried to answer. Now, she finds, it has been set for trial in a few days. She is very worried because she knows her English is not good enough for her to understand what is going on in court and explain her side of the story to the judge.

Poor Ms. Martinez' troubles are not finished for the day. Her children tell her they have been thrown out of school because their English is so bad they are flunking all their subjects. The day's

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ization there is no "official" language of this country. Refer to note 100 *infra* and accompanying text. Second, persons seeking naturalization are held to much stricter standards than native born citizens. For example, people who are mentally insane, retarded, or people who are chronic alcoholics or paupers are all excluded from admission into the United States by the immigration laws. 8 U.S.C. § 1182 (1982). Using the immigration laws to infer a national language would make no more sense than using them to infer this country has a national policy opposed to the mentally retarded. Third, even within the naturalization laws themselves, the standards vary. Those immigrants who are at least 50 years old and who have resided in this country for at least 20 years may take the citizenship examination in the language of their choice. 8 U.S.C. § 1423 (1982). Congressman Manuel Lujan, Jr., R-N.M., has recently introduced legislation which would reduce the 20 year residency requirement to five years for persons over 65 years of age. Martinez, *Oportunidad del Congreso Para Hacer Algo Notable*, El Visitante Dominical, Dec. 8, 1985, at 3.

mail also brings word that the welfare assistance she receives for them has been terminated because she failed to provide information required last month by the welfare agency. Ms. Martinez understood neither the request nor the termination notice because they are written in English.

Consider the curious results which obtain from an application of our domestic laws to Ms. Martinez' situation. She would have a cause of action under 42 U.S.C. section 1981 against the bar owner and its customers,<sup>50</sup> and yet her employment termination for exactly the same conduct would be upheld.<sup>51</sup> (Is the right to speak Spanish more sacred in a bar than on the job?)

Regarding her consumer problems, it may be better for her to have ignored the summons and complaint rather than try to answer and appear to defend herself. Courts have set aside default judgments for a language barrier<sup>52</sup> but may not afford her an interpreter at the trial if she attempts to defend.<sup>53</sup>

Ms. Martinez would find, considering her children's situation, that the state could not deny her children an education based upon their language situation.<sup>54</sup> It could, however, because of the language barrier, effectively deny them the food, shelter and medical care necessary to sustain their lives while they try to study.<sup>55</sup>

These are admittedly dramatic, oversimplified applications. They illustrate, however, that we have not thought through whether and why we might choose to respect language differences in this country.

### III. WHY SHOULD WE RECOGNIZE A "RIGHT" TO ANY LANGUAGE OTHER THAN ENGLISH?

It appears to be an unfortunate reality that many monolingual persons in this country feel threatened by the use of a language they do not understand,<sup>56</sup> and exhibit hostility to the concept of

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50. *Hernandez*, 368 F. Supp. at 755-56.

51. *Garcia*, 618 F.2d at 272.

52. *Cota*, 17 Ariz. App. at 327-28, 497 P.2d at 834-35.

53. *Jara*, 21 Cal. 3d at 186, 578 P.2d at 97, 145 Cal. Rptr. at 850.

54. Refer to notes 12-21 *supra* and accompanying text.

55. Refer to note 49 *supra* and accompanying text.

56. Consider the following:

A proposed amendment to the Constitution would declare "the English language shall be the official language of the United States" and "neither the United States nor any state shall require . . . the use in the United States of any language other than English." It would prohibit governments from mandating multilingual publi-

legal recognition of the right to use any language other than English.<sup>57</sup> Perhaps part of the explanation for the inconsistent recognition of language rights in this country which we saw in part II of this Article is that monolingual legislators, judges, and attorneys carry, at least subconsciously, some of these same feelings into the decision-making process. Even those courts and legislatures which have taken a more enlightened approach to the recognition of language rights may have never completely expressed or perhaps even understood why the right to maintain their native language would be viewed by people as important, useful, beneficial, and even beautiful. Perhaps an examination at this point, of the sociological and anthropological views of language and culture would be an important digression.

In our day-to-day existence we take language for granted. If we do think about it at all, particularly if we are monolingual, we assume that "it is a vehicle equally fitted to convey any beliefs."<sup>58</sup> Such a view is inconsistent with the studies of Edward Sapir. Sapir, an American linguist, maintained that:

The relation between language and experience is often misunder-

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cations and from establishing bilingual education as a general entitlement. It would end the pernicious practice of providing bilingual ballots, a practice that denies the link between citizenship and shared culture . . . .

Teddy Roosevelt's life was one long Fourth of July, a symphony of fireworks and flamboyant rhetoric. He embodied the vigor of the nation during the flood tide of immigration. He said: "We have room for but one language here and that is the English language, for we intend to see that the crucible turns our people out as Americans, of American nationality, and not as dwellers in a polyglot boarding house." American life, with its atomizing emphasis on individualism, increasingly resembles life in a centrifuge. Bilingualism is a gratuitous intensification of disintegrative forces. It imprisons immigrants in their origins and encourages what Jacques Barzun, a supporter of the constitutional amendment, calls "cultural solipsism."

Will, *In Defense of the Mother Tongue*, NEWSWEEK, July 8, 1985, at 78.

Several local governments have adopted "English-only" statutes or resolutions. See *El Hispano* (Albuquerque, N.M.), June 28, 1985, at 6. Rio Arriba County, New Mexico, on the other hand, is considering alternating the language used at its County Commission meetings between English and Spanish. See *Rio Grande Sun* (Española, N.M.), Jan. 30, 1986, at A10.

57. "[W]ere significant Mexican-American groups to advocate irredentist-like positions, such as open borders or state-recognized official bilingualism, one should expect to see the growth of nativist sentiments on the part of many Americans, who would question the loyalty of Mexican-Americans." Weiner, *Transborder Peoples*, in *MEXICAN-AMERICANS IN COMPARATIVE PERSPECTIVE* 130, 155 (W. Connor ed. 1985). Note that this country already acknowledges some degree of "official bilingualism" in the circumstances described in part II *supra* of this Article.

58. P. HENLE, *LANGUAGE, THOUGHT AND CULTURE* 1 (1966).



stood. Language is not merely a more or less systematic inventory of the various items of experience which seem relevant to the individual, as is so often naively assumed, but is also a self-contained, creative symbolic organization, which not only refers to experience largely acquired without its help but actually defines experience for us by reason of its formal completeness and because of our unconscious projection of its implicit expectations into the field of experience.<sup>59</sup>

Benjamin Lee Whorf, a student of Sapir, developed Sapir's claim, maintaining that language constitutes a sort of logic, a general frame of reference, and as a result, molds the thoughts of its users. He claimed that significant relationships exist between the general aspects of a language and the characteristics of the culture wherein it developed. Whorf substantiated this thesis by comparing American Indian languages, notably Hopi, with European languages. Whorf found the differences among the European languages so insignificant in comparison to the differences between them and Hopi, that he grouped the European languages together under the title "Standard Average European" (SAE).<sup>60</sup>

The causal relation between language and culture has been documented in many other studies.<sup>61</sup> "Ethnolinguistics" has emerged as a field of study of the role of language in the transmission of culture from one generation to another ("enculturation") and from one culture to another ("acculturation").<sup>62</sup> "Sociolinguistics" is an even more recently emerging field. It considers the differential social roles of various languages co-existing in the same society, the development and spread of auxiliary languages in multilingual situations, the role of language as ethnic identification, and problems of language policy in education.<sup>63</sup> Identifying and studying the causal relationship between language and culture is not to say which influences the other. "Either may be the causal agent, both may be the joint effects of a common cause, or there may be mutual causal action."<sup>64</sup> Nonetheless, it is clear that language and culture are inseparably interrelated. Perhaps the most

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59. *Id.*

60. *Id.* at 2.

61. R. BURLING, *MAN'S MANY VOICES—LANGUAGE IN ITS CULTURAL CONTEXT* (1970); BLOUNT & SANCHES, *SOCIOCULTURAL DIMENSIONS OF LANGUAGE CHANGE* (1977).

62. Greenberg, *The Science of Linguistics*, reprinted in, P. HAMMOND, *CULTURAL AND SOCIAL ANTHROPOLOGY* 388-97 (1975).

63. *Id.*

64. P. HENLE, *supra* note 58, at 5.



succinct expression of this relationship is that "[t]he world appears different to a person using one vocabulary than it would to a person using another."<sup>65</sup>

People, particularly children, who are denied the right to view the world through their language and culture are made to feel inferior, and they react negatively.<sup>66</sup> Nonetheless, even if there is a

65. *Id.* at 7. Henle borrowed a definition of culture as "all those historically created designs for living, explicit and implicit, rational, irrational and nonrational, which exist at any given time as potential guides for the behavior of men." *Id.* at 3, referring to, Kluckhohn & Kelly, *The Concept of Culture*, in *THE SCIENCE OF MAN IN THE WORLD CRISES* 97 (1945). Henle illustrated his conclusion that "world view" is influenced by vocabulary and vice-versa, as follows:

The Navaho, for example, possess color terms corresponding roughly to our "white," "red," and "yellow" but none which are equivalent to our "black," "grey," "brown," "blue," and "green."

They have two terms corresponding to "black," one denoting the black of darkness, the other the black of such objects as coal. Our "grey" and "brown," however, correspond to a single term in their language and likewise our "blue" and "green." As far as vocabulary is concerned, they divide the spectrum into segments different from ours. It would seem probable that on many occasions of casual perception they would not bother to notice whether an object were brown or grey, and that they would [not] merely avoid discussions as to whether a shade of color in a trying light was blue or green, but they would not even make the distinction.

This example must not be taken as showing that the Navahos are incapable of making color distinctions which are familiar to us. They do not suffer from a peculiar form of color-blindness any more than we do since we lack words for the two sorts of black which they distinguish. The point is rather that their vocabulary tends to let them leave other distinctions unnoticed which we habitually make.

If we are right in claiming an influence of vocabulary on perception, it might be expected that vocabulary would influence other aspects of thought as well. The divisions we make in our experience depend on how we perceive and so would be subject to the same linguistic influence as perception. Once again, one would expect the influence to run in both directions. If, in thinking about the world, one has occasion to use certain ideas, one would expect them to be added to the vocabulary, either directly or through metaphor; this is probably the primary influence. Once the term is in the vocabulary, however, it would constitute an influence both on perception and conception.

*Id.* at 7-8.

66. Refer to note 21 *supra*. See also REYNOSO, *COMMUNITY DISPUTE RESOLUTION: HISPANIC CONCERNS, THE ELEMENTS OF GOOD PRACTICE IN DISPUTE RESOLUTION* 215 (1985):

High on the agenda of most Hispanic groups are the issues of bilingualism or multilingualism and biculturalism or multiculturalism. They believe that in a country as great as ours all people have a right to their own ethnicity, their own language. These rights are based in the Constitution of this country. So when there is an effort by others to take away that right there is resentment. The resentment doesn't always rise to the level of a conflict.

*Id.*

See also Piatt, *Linguistic Diversity on the Airwaves: Spanish Language Broadcasting and the FCC*, 1 LA RAZA L.J. at 112-13 (1984)(rejection of culture and language at school

link between language and culture and even if people feel bad or inferior if we force them to set their language and culture aside to join the "melting pot," the United States is a predominantly English-speaking country. For their own good, should not all people in this country be required to adopt the majority language and set any other aside in order to be successful here?

No one would seriously challenge the fact that English is the predominant language in this country; that social and economic pressures require one to acquire a good command of the language in order to become successful.<sup>67</sup> It does not follow, though, as a matter of logic and as demonstrated by empirical research, that the native speaker of a language other than English should be officially stripped of his or her tongue in order to obtain English proficiency<sup>68</sup> and resultant socio-economic success.<sup>69</sup> Human beings ap-

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results in serious academic and emotional problems for Hispanics, particularly children).

67. Cultural and societal forces in the United Kingdom and the United States, in particular, have pushed nonnative English speakers who have come to these countries as immigrants, refugees, or migrant workers to learn English so that they might move into the work force and achieve acceptance in the society beyond their own communities. In modern times, no official national-level policies mandate English; the status of English has been achieved in these countries without official declaration or the help of an official language academy. For speakers of other languages, the primary mandate for English has come from societal forces working on an individual's desire to secure education and employment, move into English-speaking social circles, and negotiate daily interactions with the bureaucratic and commercial mainstream.

Heath, *Language Policies: Patterns of Retention and Maintenance*, in *MEXICAN-AMERICANS IN COMPARATIVE PERSPECTIVE* 259 (W. Connor ed. 1985).

68. These research findings [in second language acquisition] also bear on the advocacy of maintenance bilingual programs. Such goals for bilingual education are not in conflict with so-called "mainstream" American ideals, since fully functional bilingualism can be attained at no expense to English. Research shows that it is wrong to think of the two languages of the bilingual in competition for limited mental space (an old view deriving from empiricist notions about language). Rather, they are interdependent and build upon each other. Recent research on the effects of a developed bilingualism in children shows that they enjoy not only the benefits of knowing two languages and literatures, but added cognitive skills and awareness about language as well. We have successfully debunked the long-held belief, rooted in work at the turn of the century on the intelligence of immigrants, that bilingualism results in the mental confusion. Should we choose to value the resources of the non-English languages with which the language minority students come to school, we need only to continue providing these students instruction in their native language even as they progress in English.

Hakuta & Campbell, *The Future of Bilingual Education*, COSSA Washington Update, Consortium of Social Science Associations (Mar. 22, 1985).

69. While the acquisition of English proficiency clearly facilitates the process of socioeconomic achievement among Hispanic men, there is no basis for assuming that bilingual education programs which encourage retention of Spanish among

parently have the capacity and the desire to alternatively view the world through different languages and cultures.

In addition to these philosophical responses, there are some very practical reasons why this country should choose to recognize some degree of "official bilingualism,"<sup>70</sup> at least as regards the Spanish language. While studies in this country have shown that during the first half of this century most European immigrant groups did not pass on their language intergenerationally, Spanish is an exception.<sup>71</sup> One study estimates that in 1985 there were 13,191,300 Spanish speakers in this country, representing almost a fourfold increase from the 3.3 million Spanish speakers in 1960.<sup>72</sup> A number of factors suggest that Spanish will be maintained as an important second language in this country.<sup>73</sup>

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Hispanics will necessarily retard their socioeconomic success. Our results suggest that foreign-born workers could improve their occupational status by participating in bilingual education programs, although it is unclear how much emphasis must be placed on improving English language skills and how much should be devoted to teaching basic skills in reading, arithmetic, and communication in order to produce desired outcomes. We hasten to add that participation in bilingual education programs should not be geared to eliminate the use of Spanish, for among the native-born who tend to have a better command of English, Spanish bilingualism does not depress socioeconomic achievement. Thus, the persistent dilemma for policy analysts is assuring that ethnic populations acquire sufficient proficiency in English to equip them for successful labor market experiences while not forcing the loss of native languages. In other words, the ultimate challenge for bilingual education programs is one of balancing the pressures of assimilation and ethnic pluralism.

M. Tienda & L. Neidert, *Language, Education, and the Socioeconomic Achievement of Hispanic Origin Men*, in *THE MEXICAN AMERICAN EXPERIENCE* 374 (1985).

70. The extent of this recognition will be discussed in part IV *infra*.

71. Macias, *National Language Profile of the Mexican-Origin Population in the United States*, in *MEXICAN-AMERICANS IN COMPARATIVE PERSPECTIVE* 285, 306 (W. Connor ed. 1985).

72. *Id.* at 287.

73. Gaarder presents nine variables, or characteristics, of Spanish speakers that he feels will support Spanish-language maintenance in the United States: (1) the length of time Spanish speakers, as indigenous groups, have been in the United States prior to Anglos and other Euro-Americans, (2) the large size of the Spanish-speaking population, (3) the relative homogeneity of the Spanish speakers, (4) constant in-migration of other Spanish speakers to reinforce the domestic population, (5) cultural access to and renewal from the hinterland (Mexico, Puerto Rico, Latin America), (6) intergenerational stability of the extended family of Spanish speakers, (7) religio-societal isolation among Spanish speakers, (8) present-day tolerance of cultural diversity in the United States, and (9) the relative isolation and hence linguistic solidarity of the Spanish-speaking group.

Gaarder argues from the previous experiences of language groups in the United States and elsewhere, but others suggest that some of the variables he has identified as supporting language maintenance actually have not done so. For example, Kloss, in his discussion of German in the United States, classifies the large



Another very practical reason to encourage maintenance of "foreign" language is that our ignorance of them is a "crippling factor" in dealing with other nations.<sup>74</sup> Our schools are failing to produce functional bilinguals through their foreign language programs.<sup>75</sup> Encouraging our bilingual citizens to maintain their linguistic diversity may produce the very beneficial result that the majority population will acquire some second-language skills, as well as a multicultural outlook from the bilingual population.<sup>76</sup>

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size of a language group, in and of itself, as an ambivalent (rather than supporting) factor for language maintenance.

One way of exploring this question is to compare Spanish speakers with other language groups in the United States in order to identify similarities and differences. The configuration or simultaneous occurrences of variables also may be important. In addition to the factors just listed, I suggest the following for consideration:

First, Spanish speakers in the United States are the northern-most segment of more than 200 million Spanish speakers in Latin America. This is an additional factor in the historical contiguity between the domestic Spanish speakers and their "country of origin."

Second, unlike the situation among turn-of-the-century immigrants, the linguistic diversity among present-day immigrants is low. As the number of persons from Spanish-speaking countries increases and they swell the barrios of U.S.-born Spanish speakers, the linguistic diversity continues to be low but the numbers of bilingual and monolingual Spanish speakers are increasing.

Third, the historical continuity of Spanish speakers in their primary settlement areas continues (the southwestern United States and Puerto Rico), but their spread or migration to other parts of the United States has given the Spanish-speaking population a national character.

Fourth, there is an intergenerational commingling, partly from the continuing immigration and partly from internal migration.

Fifth, the development of an institutional language infrastructure has continued. For example, in the schools, bilingual schooling has increased and Spanish continues to be the most popular "foreign language" in high schools and colleges. Language issues have forced the strict enforcement of voting rights and judicial due process (court interpreters are now required) for persons who speak little or no English. The Spanish-language mass media—particularly broadcast media—continue to grow; they have been characterized as the "fifth network." Chicano literature is experiencing a resurgence in Spanish.

*Id.* at 307-308.

74. "The failure to communicate with foreigners in their own language prevents them from understanding us as we really are. It makes it difficult for us to project our real purposes to other people." Vernon Walters, U.S. Ambassador to the United Nations, *U.S. NEWS & WORLD REP.*, June 15, 1985, at 31.

75. Refer to Hakuta & Campbell, *supra* note 68.

76. According to a 1985 survey by the Strategy Research Corporation, 41% of non-Hispanics living in the Miami, Florida, area now believe that for their children to succeed, it is essential for them to read and write Spanish. Sixty percent said they enjoy socializing with Latino friends. Ericksen, *Assimilation is Working in Miami—In Reverse*, *El Perico* (Kansas City, Mo.), Aug. 1985, at 10.



This in turn could only help us in our international relations, particularly with our Latin American neighbors to the south.

#### IV. TOWARD RECOGNITION OF A RIGHT TO LANGUAGE

Assuming that we wish to recognize some legal protection and recognition of a right to language, the problem is to develop an analytical framework that fairly takes into account legitimate societal needs and the rights of the individual who speaks a language other than English.

As a first step, this writer would abandon the concept which forces protection of language rights into the "national origin" pigeonhole.<sup>77</sup> The real interests we seek to protect when we afford some language protection appear to be the individual's rights to: 1) view the world through his or her own language and culture, and 2) not be shut off from the exercise of some fundamental legal right or the satisfaction of some basic human need because of a language barrier.<sup>78</sup> Many of those individuals whose language rights we would protect are native-born United States citizens. Using a "national origin" fiction is thus analytically unsound, and may perpetuate the fear of some monolingual persons that the use of a language other than English is "foreign."<sup>79</sup> Also, this writer would urge abandonment of limiting language protection under the theory that because language is "mutable", the right to its exercise should inherently be limited, at least as regards bilinguals.<sup>80</sup> The exercise of the choice of a "world view" through the eyes of a religion is protected, although clearly such a choice is mutable.<sup>81</sup>

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77. Refer to notes 35, 36 *supra* and accompanying text. See also Note, *A Trait-Based Approach to National Origin Claims Under Title VII*, 94 YALE L.J. 1164 (1985).

78. Refer to text *supra*, parts II and III.

79. Throughout this Article, the writer has consciously avoided referring to languages other than English as "foreign languages." While it may be easier to refer to any language other than English as "foreign," any language in use in this country cannot be "foreign" to its native speakers. This is particularly true in the case of the Spanish language which was in use in what is now the southwest United States long before English was spoken there. For an historical summary, see HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS 700-19 (Thernstrom ed. 1980). On a personal level, the author cannot bring himself to classify the Spanish language, which he learned in this country through family, social contacts, and in the school systems, as a "foreign" language.

80. *Garcia*, 618 F.2d at 270. See Note, *Garcia v. Gloor: Mutable Characteristics Rationale Extended to National Origin Discrimination*, 32 MERCER L. REV. 1275 (1981). The author of that article would allow an employer to restrict bilingual language choices but under a "job relatedness" standard rather than under a "mutable-immutable" rationale.

81. *Garcia*, 618 F.2d at 269. The United Nations Charter, to which the United States

The existing, patchwork protection of language rights should be replaced with an analysis that can be summarized as follows:

1. Where, because of a language barrier, an individual is denied the exercise of a fundamental legal right or denied access to a basic human need, society would recognize "limited official bilingualism" in order to allow access to the right or the need;

2. Where circumstances require communications in one standard language understood by the majority, for the immediate safety of persons or property, society would recognize "limited official monolingualism";

3. In the vast majority of other communications, individuals would be free to utilize any language of choice, and society would provide a remedy for infringement of that right.

Having sketched the outline, let us turn to filling it in.

#### A. *Limited Official Bilingualism*

Courts have demonstrated proficiency in identifying Bill of Rights guarantees so fundamental to the American scheme of justice so as to apply to the states via the due process clause of the fourteenth amendment.<sup>82</sup> They have also been able to identify, among others, the right to travel,<sup>83</sup> the right to vote,<sup>84</sup> and the right to properly defend oneself in criminal proceedings,<sup>85</sup> as fundamental interests for equal protection purposes. Where the exercise of such a right is prohibited by one's poverty, courts have determined that the right or interest is so fundamental that society should provide assistance so that the right can be exercised.<sup>86</sup> Similarly, courts and legislatures have implicitly recognized that there are some fundamental rights, such as the right to confront wit-

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is a party, identifies one of the purposes of the U.N. to be that of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." 59 Stat. 1033, 1037 (1945).

82. *Benton v. Maryland*, 395 U.S. 784 (1969).

83. *Shapiro v. Thompson*, 394 U.S. 618 (1969).

84. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

85. *E.g.*, *Tate v. Short*, 401 U.S. 395 (1971)(indigent convicted of offenses punishable by fine only cannot be incarcerated to satisfy fines); *Douglas v. California*, 372 U.S. 353 (1963) (indigents entitled to state-provided appellate counsel); *Griffin v. Illinois*, 351 U.S. 12 (1956)(indigents entitled to state-provided trial transcript for use on appeal).

86. *E.g.*, *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Gideon v. Wainwright*, 372 U.S. 335 (1963)(indigent has right to state-provided counsel in criminal matters, and, absent a knowing waiver, may not be imprisoned for any offense unless represented by counsel).

nesses at a criminal trial<sup>87</sup> or the right to vote,<sup>88</sup> which cannot effectively be exercised by a person who does not understand the process due to a language barrier. In such cases, society provides interpreters or bilingual materials to allow the exercise of the right.

Courts and legislatures should continue the process of identifying the fundamental legal rights which should not be foreclosed to persons with a language barrier. Where such a right is identified, society should provide bilingual assistance where the right would otherwise be foreclosed to persons with limited English proficiency.

One area where the right should be extended immediately is in the civil courts and before administrative bodies. The relative financial interests at stake (for example, tenant eviction proceedings or hearings to terminate public assistance) may be greater than in relatively minor criminal proceedings. We choose not to allow our criminal courts to be a "babble of voices."<sup>89</sup> We may have the right to maintain business records in an understandable language.<sup>90</sup> Why should not litigants in civil and administrative proceedings be afforded more than the facade of justice that may now exist for those not completely proficient in English?<sup>91</sup>

There are needs which, although not categorized by our system of jurisprudence as "fundamental rights," would nonetheless be recognized by us as basic to our survival and advancement as a species. Among these would be the need for food and shelter, and a basic education.<sup>92</sup> Where a human being in our society would oth-

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87. Refer to notes 7-10 *supra* and accompanying text.

88. Refer to Voting Rights Act, *supra* note 28.

89. *Negron*, 434 F.2d at 390-91.

90. *Yu Cong Eng.*, 271 U.S. at 500-01.

91. A study conducted on behalf of the Director of the Administrative Office of the United States Courts pursuant to the Court Interpreters Act of 1978, 28 U.S.C. § 1827 (1982), found that because of the sophisticated language level used in the courts, it is necessary to have a minimum of fourteen years of education to understand the proceedings of a criminal trial and still more to understand a civil trial. See *Seltzer v. Foley*, 502 F. Supp. 600, 604 (S.D.N.Y. 1980).

92. See MASLOW, TOWARD A PSYCHOLOGY OF BEING 199-200 (1962).

Basic need gratification is too often taken to mean objects, things, possessions, money, clothes, automobiles and the like. But these do not in themselves gratify the basic needs which, after the bodily needs are taken care of, are for (1) protection, safety, security, (2) belongingness, as in a family, a community, a clan, a gang, friendship, affection, love, (3) respect, esteem, approval, dignity, self-respect and (4) freedom for the fullest development of one's talents and capacities, actualization of the self. This seems simple enough and yet few people anywhere in the world seem able to assimilate its meaning. Because the lowest and most urgent needs are material, for example food, shelter, clothes, etc., they tend to generalize this to a chiefly materialistic psychology of motivation, forgetting that



erwise be entitled to have these needs met by means of public assistance or public education, society should allow the person with a language barrier access to them. In the case of public assistance, we should provide interpreters to assist with the application process and through any administrative hearings that are otherwise available. In the case of public education, given the profound negative impact upon children whose language and culture are rejected by monolingual institutions,<sup>93</sup> we should recognize a right to bilingual education.

Acknowledging a "right" to bilingual education would undoubtedly be controversial. The United States Secretary of Education has recently made bitter attacks upon the concept.<sup>94</sup> Yet, the self-image and future success of our children is profoundly affected by the majority's acceptance or non-acceptance of their language and culture. We should utilize their language skills and thought processes to foster intellectual development while simultaneously assisting them in obtaining English language proficiency. It should not be necessary for them to sacrifice their rich native language, culture, and self-esteem in order to participate in the educational system and in society.<sup>95</sup> We cannot afford, at this late date, to return to punishing our children for viewing the world through their language and culture.<sup>96</sup>

Implementing this move to "limited official bilingualism" would require overhaul of legislative enactments and judicial precedents. Undoubtedly, it would be costly.<sup>97</sup> The same things

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there are higher, non-material needs as well which are also "basic."

93. Refer to note 21 *supra* and accompanying text.

94. Address by William J. Bennett to Association for a Better New York (Sept. 26, 1985). See also BARKER, *Bennett's Be Initiative: A Deceitful Step in the Wrong Direction*, LA VOZ DEL LLANO, KAN. ADV. COMM. ON MEX. AM. AFF., Jan. 1986, at 1.

95. Excerpt from New York State Regents Position Paper on Bilingual Education, reprinted in, *Position Paper on the Role of English as a Second Language in Bilingual Education*, Georgetown University. See also UNESCO, *The Use of Vernacular Languages in Education* (1953), reprinted in, Baral, *Second Language Acquisition Theories Relevant to Bilingual Education*, in *THEORY, TECHNOLOGY, AND PUBLIC POLICY ON BILINGUAL EDUCATION* (1983).

96. Many Hispanics recall days when they were punished, often physically, for speaking Spanish at school. See Guzman, *Dando Fin a las Angustias del Pasado*, El Visitante Dominical, Nov. 10, 1985, at 8. See also Reynoso, *supra* note 66, at 215. Instatement of "English-only" in the schools would implicitly mean some discipline would be imposed upon those children who could not or would not comply.

97. See *Carmona v. Sheffield*, 325 F. Supp. 1341 (N.D. Cal. 1971). Since *Carmona*, the United States court system has adopted and implemented guidelines for the certification and use of interpreters. Refer to note 6 *supra*. The wheel would not have to be reinvented:



can be said, however, of the recognition of a right to state-provided transcripts or attorneys for indigents facing the criminal process. In those cases courts identified the right as fundamental, knowing that additional economic burdens would be placed on the state. The duty to alleviate the deprivation of rights which cannot be exercised because of a language barrier has been held to be clear and compelling, notwithstanding that there may be practical problems to overcome in providing complete and effective relief.<sup>98</sup>

### *B. Limited Official Monolingualism*

There are circumstances where communication in English in this country should be required. Allowing airplane pilots, for example, to communicate with each other and the ground in any language of choice could be inherently dangerous to person and property. There are other communications, such as traffic signs or emergency communications which society should require to be made in the majority language to protect persons and property from the immediate risk of harm. Similarly, although not on the "emergency" level, employers should be free to require their employees to communicate with potential customers in the language of the customer's choice to facilitate commerce and protect the employer's property interest in the business. In recognizing "limited official monolingualism," society should place the burden on the proponent of the enforced monolingualism to demonstrate that the danger to person or property outweighs the individual right to expression before imposing the use of the language. "Irritation" by monolingual customers or other third parties would be insufficient justification for the imposition of the majority language.<sup>99</sup>

### *C. Language of Choice in Other Circumstances*

In the vast range of remaining communications, government would adhere to its tradition of adopting no official language nor

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interpreters certified in federal courts could be utilized in administrative proceedings without the cost of training and certification. Libraries across the country now have access to information regarding educational materials in languages other than English. See Valentine, *Minority Language Selection: Helping Ourselves to Help Others*, WILSON LIBR. BULL. at 26-29 (Jan. 1986).

98. *United States v. Texas*, 506 F. Supp. at 437-438.

99. *Hernandez*, 368 F. Supp. at 752. Cf. *Diaz v. Pan American World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971)(customer preference for female stewardesses insufficient justification for refusal to hire men for same jobs).

denying personal liberties in language selection.<sup>100</sup> Courts would provide a remedy for private interference with language use, consistent with *Hernandez*.<sup>101</sup>

## V. CONCLUSION

It is time to recognize a human right to language in this country. The analysis presented in this article could serve as a starting point. We should reject attempts to adopt an "English-only" constitutional amendment.<sup>102</sup> Such an amendment, if adopted, would immediately return our criminal courts, for many people, to a "babble of voices," would disenfranchise many of our voters, would impose second-class status and feelings of inferiority upon many of our children, and would signal the other nations of the world that we are not yet ready to join them in an attempt to appreciate any world view other than our own.

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100. Following the Anglo-Saxon tradition of considering language choice the responsibility of the individual, the United States has maintained the English custom of not regulating language officially or of denying personal liberties in language through federal policies. In spite of several efforts in the colonial and early national periods to establish an academy of language to formulate policies and standards of language use, the United States consistently turned down such proposals from both political officials and citizens. Since the nineteenth century some states and local communities have tried to promote a monolingual tradition and to emphasize standard English as the mark of reason, ethics, and aesthetics, but the federal government has formulated no official language policy.

Heath, *Language Policies: Patterns of Retention and Maintenance*, *supra* note 67 at 266.

Attempts to establish a national language academy are traced in Heath, *A National Language Academy: Debate in the New Nation*, 11 INT'L J. OF THE SOC. LANGUAGE 9-44 (1976).

101. Refer to note 22 *supra* and accompanying text.

102. Refer to note 56 *supra*.